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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,216	04/08/1999	TAKAFUMI ATARASHI	Q52648	2612

7590

05/09/2005

SUGHRUE MION ZINN MACPEAK & SEAS  
2100 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20037

EXAMINER
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CHANNAVAJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/202,216

Applicant(s)

ATARASHI ET AL

Examiner

Lakshmi S. Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7 and 9-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11-5-04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt of IDS dated 11-5-04 and amendment and remarks dated 1-11-05 is acknowledged.

Claims 1-4, 6, 7 and 9-16 are pending in the instant application.

### ***Response to Arguments***

Applicant's arguments filed 1-11-05 have been fully considered but they are not persuasive.

The following rejection of record has been maintained:

1. Double patenting rejection over U.S. Patents claims 1-6 of U.S. Patent No. 5,985,466, claims 1-13 of U.S. Patent No. 6,310,118, claims 1-20 of U.S. Patent No. 5,763,085 and claims 1-3 of U.S. Patent No. 6,207,280.

**RESPONSE:** Applicants argue that present claims require a powder, wherein at least one of the coating layers is an organic layer and having a constituting of coating layers different from that of the four asserted U.S. Patents. Applicants also that the instant invention now requires at least three or more plural coating layers, different refractive indexes of the layers. Applicants' arguments are not found persuasive because applicants have not explained how the same materials in both the instant and the patented claims have different refractive index or cause a different coloring. Instant claimed plural layers of coating was also claimed in the patented claims and therefore,

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coating three or more than three layers would have been obvious for a skilled artisan from the patented claims and still produce a coloring multi-layered powder.

The following is a new rejection:

***Claim Rejections - 35 USC § 103***

Claims 1-4, 6, 7 and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-115071 (JP, submitted on PTO 1449, 11-5-04) in view of US 3,767,443 to Clark et al (Clark) or a combination of JP and Clark.

JP teaches production of a black pigment that is excellent in applicability such as covering power and spread in cosmetic application. The pigment is formed by formed a thin interlayer of a metal oxide or its hydrate on the surface of an inorganic or organic powdery material (reads on the instant particle). The powder is further coated with triiron tetroxide by combining ferrous (II) salt and an oxidizing agent in an aqueous solution. JP teaches metal oxides such as iron, aluminum, nickel etc., for interlayer coating. Thus, the composition of JP comprises a core coated with two layers as opposed to the three or more layers of the instant claims.

Clark teaches nacreous pigments comprising a plurality of high refractive index layers of titanium or zirconium dioxide layers, separated by one or more layers of organic film-forming layers or inorganic hydroxides or oxides. Clark teaches that the

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plurality of layers are separated by and adherent to one or more thin layers of organic film-forming layers or inorganic hydroxides or oxides that acts as an interleaving agent, which raises the refractive index of the said titanium or zirconium dioxide layers (col.1). Clark also suggests optimizing the thickness of the layers depending on the pigment used and suggests that the thickness is important in determining the optical properties of the pigment (col. 4, lines 3-45). Clark does not specifically state coating the layers of titanium or zirconium dioxide on a core. However, Clark teaches coating on a support, which could be interpreted as a core or alternatively absent showing evidence to the contrary product of Clark upon the stripping the coated from the support and comminuting results in a core covered with plural layers of coated material because Clark clearly states that upon comminuting the resulting product has a particle size of upto 70 microns (col. 7, lines 7-25).

Thus, both JP and Clark teach production of multilayered coated product for application of color cosmetic. Both JP and Clark teaches organic and inorganic layers Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the layer thickness of the layers (formed by titanium oxide and organic resins) in the multilayered coated particle of JP because Clark suggests that thickness of the layers and refractive index is important in controlling the optical properties and thus in retaining or eliminating the colored effects caused by optical interference. Accordingly, the expected result is that varying the thickness of the titanium dioxide results in a different color reflection, for example, blue to orange. Further, depending on the desired color reflection one of an ordinary skill in the art

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would have coated individual particles or all the particles with the same or different thickness of organic or inorganic intervening layers.

Claims 1-4, 6, 7, 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Instant claim recites the limitation "at least three or more plural coating layers", which is indefinite because the expression at least three and plural are redundant and also confusing as it is unclear if the claim requires at least three layers or plural layers, which could be more than one layer.

### ***Conclusion***

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11-5-04 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

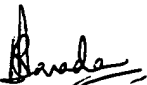
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

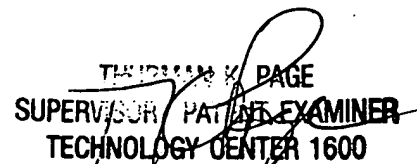
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615  
May 4, 2005



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